

REMARKS

I. Status of the claims

After entering this amendment, claims 1, 2, 3, 5-22, and 28 will be pending in this application. Claim 1 has been amended by deleting "a hydrogen atom" from the definition of R_2 . Claim 1 has also been amended by reciting that "with the proviso that only one of A, B, D or E is a nitrogen atom," in order to conform the scope of the claim to the subject matter elected in response to the Restriction Requirement of March 12, 2008. Claim 22 has been amended by replacing all instances of "ter-butyl" with "tert-butyl." Additionally, Applicants inserted a line break in claim 22 between the fourth and fifth compounds from the end of the claim. Claims 4, 23-26, and 31-33 have been cancelled without prejudice or disclaimer for being directed to non-elected subject matter.

II. Rejections under 35 U.S.C. § 112, second paragraph

The Office rejected claim 1 under 35 U.S.C. 112, second paragraph, as being indefinite. The Office argues that claim 1 "recites R_2 to represent $L_3-(W_2)_p$, wherein L_3 can be a single bond and p can be equal to 0." Office Action at 4. The Office argues that "[s]uch a group represents an unassociated single bond (a single bond with nothing attached)." *Id.* Applicants respectfully traverse this rejection.

Definiteness of a claim must be analyzed, inter alia, in light of "the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made." M.P.E.P. § 2173.02. In this case, the Office properly recognized that when L_3 is a single bond, p cannot be equal to zero but

must be equal to one, so that R_2 is W_2 . This interpretation is further made clear because R_2 cannot be a hydrogen.

Applicants remind the Office that "[t]he primary purpose of this requirement of definiteness of claim language is to ensure that the scope of the claims is clear so the public is informed of the boundaries of what constitutes infringement of the patent." M.P.E.P. § 2173. One of ordinary skill in the art having prepared a compound and trying to determine whether such compound infringes the instant claims would be able to make that determination easily. Accordingly, Applicants respectfully request that this rejection be withdrawn.

III. Rejections under 35 U.S.C. § 102—WO 02/14317 and WO 02/020013

The Office rejected claims 1-3, 5-7, 12, 15-19, 21 and 28 -under 35 U.S.C. 102(a) as being anticipated by WO 02/14317 ("*Cai I*") and WO 02/020013 ("*Cai II*").

The Office argues that *Cai I* anticipates the instant claims by disclosing "compounds of instant formula I wherein L_1 and L_2 are single bonds, n is equal to 0, X is oxygen, R_7 is alkyl (t-butyl), R_4 and R_5 are hydrogen, A , B , C , and D are singularly the only ring nitrogens, R_6 can be hydrogen or dialkylamino (dimethylamino or N-morpholinyl), and R_2 is hydrogen or oxide." Office Action at 3. In support of the rejection, the Office cites "compounds of WO 02/14317 [disclosed at] page 58, paragraph B; page 60, paragraph B; page 62, paragraph C; page 65, paragraph D; page 68, paragraph D; page 71, paragraph C." *Id.* The Office did not refer to any specific compounds from *Cai II*.

Applicants amended claim 1 by deleting "a hydrogen atom" from the definition of R₂. After this amendment, none of the compounds cited by the Office falls within the scope of the instant claims. Accordingly, Applicants respectfully request that this rejection be withdrawn.

IV. Rejections under 35 U.S.C. § 102—WO 98/20875

The Office rejected claims 1-3, 5-7, 12, 15-19, 21 and 28 -under 35 U.S.C. 102(a) as being anticipated by WO 98/20875 ("*Filla*").

The Office argues that *Filla* anticipates the instant claims by disclosing "compounds of instant formula I wherein L₁ and L₂ are single bonds, n is equal to 0, X is oxygen, R₇ is alkyl (t-butyl), R₄ and R₅ are hydrogen, A is the only ring nitrogen[], and R₆ is amino" Office Action at 4. In support of the rejection, the Office cites the compound of Preparation IV on page 28 of WO 98/20875. *Id.*

Applicants amended claim 1 by deleting "a hydrogen atom" from the definition of R₂. After this amendment, the compound of Preparation IV cited by the Office does not fall within the scope of the instant claims. Accordingly, Applicants respectfully request that this rejection be withdrawn.

V. Claim Objections

The Office objected to claims 8, 9, 10, 11, 13, 14, 20, and 22 as being dependent upon a rejected base claim, but indicated they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Office Action at 4. In view of the present amendments and remarks, the previously-rejected claims are believed to be in condition of allowance. Accordingly,

claims 8, 9, 10, 11, 13, 14, 20, and 22 are also allowable and Applicants respectfully request that this objection be withdrawn.

The Office also objected to claim 22 for reciting "ter-butyl" instead of "tert-butyl" on the 5th compound on page 22 of the Preliminary Amendment filed on September 28, 2004. Office Action at 5. The Office further objected to claim 22 indicating that the 8th compound on page 22 actually represents two compounds. The Office requested that a line break be used to separate them. *Id.* Applicants have amended claim 22 to address the Office's concerns. Accordingly, Applicants respectfully request that this objection be withdrawn.

VI. Conclusions

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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